

Initiative No. 1302

November 16, 2020

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-4074.1/21

ATTY/TYPIST: KS:jlb

BRIEF DESCRIPTION:

AN ACT Relating to depoliticizing ballot measure titles and summaries by removing ballot measure title and summary powers from the Washington attorney general and giving these duties to an apolitical third party; amending RCW 29A.72.025, 29A.72.040, 29A.72.050, 29A.72.060, 29A.72.080, 29A.72.280, and 29A.72.283; creating new sections; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

PART I

FINDINGS

NEW SECTION. **Sec. 1.** The people find that:

(1) Internal documents reveal that a Washington state assistant attorney general knowingly and improperly rewrote a ballot title and summary to mollify "friendly" initiative sponsors with political connections, in violation of rulings by judges.

(2) Two identical initiatives were filed with the secretary of state in August 2020. Initially, the Washington state attorney general's office issued a decent ballot title for I-1200 on September 2, 2020. The attorney general's office properly alerted voters to changes that I-1200 would be making to a voter approved and reaffirmed state law.

(3) Among the initiatives' sponsors, Jesse Wineberry, a former state representative, saw the ballot title for I-1200, and called deputy solicitor general Alan Copsey on the morning of September 3, 2020. According to a public records act disclosure, Mr. Wineberry told Mr. Copsey that with the attorney general's office's I-1200 ballot title, they could "not run the measure."

(4) In less than six hours, Mr. Copsey worked with Mr. Wineberry, through "a whole lot of back and forth," and reversed the course expressed in the original I-1234 ballot language, and issued

a completely different ballot title and summary for I-1234, in Mr. Copsey's own words, that the sponsors "would be comfortable with."

(5) The new and reissued I-1234 ballot title completely removed the language that would alert voters to changes that I-1234 would be making to a voter approved and reaffirmed state law.

(6) Mr. Copsey's peers raised objection. Notwithstanding that opposition from within the attorney general's own office, they went with the improperly influenced version that Mr. Copsey and Mr. Wineberry agreed upon.

(7) Opponents of I-1234 filed a ballot title challenge, and a judge ruled against Mr. Copsey's version. Mr. Wineberry continued to file similar initiatives. Even with this history, and the judge's ruling, the attorney general's office continued allowing Mr. Copsey to issue misleading ballot titles and initiatives that would allow Mr. Wineberry to run those measures.

(8) Solicitor General Noah Purcell was sent Mr. Copsey's email about his discussion with Mr. Wineberry. Opponents of I-1234 contacted Mr. Purcell and requested Mr. Copsey be removed from issuing ballot titles and summaries for any initiatives related to I-1234. They even sent a follow-up email to Mr. Purcell. Their emails remain unanswered.

PART II

INTENT

NEW SECTION. **Sec. 2.** (1) The people find that:

(a) In 1912, Washington became one of the first states to adopt the initiative and referendum process, thus securing the rights of citizens to make and remake their laws, and to provide a check over the decisions of their legislature.

(b) Today, if Washingtonians are dissatisfied with certain laws or feel new laws are needed, they can petition to place proposed legislation on the ballot. The initiative and referendum processes guarantee Washington's electorate the right to legislate. Many of

our most significant laws, such as our public disclosure laws, were enacted by this process.

(c) Washington voters are regularly confronted with long lists of ballot propositions and the difficult task of reading the titles and figuring out what they will be voting on. The confusing ballot title language is intentional and political. Under current law, the Washington attorney general is tasked with crafting titles and summaries of ballot measures. The law requires the attorney general to give a true and impartial description of the measure's essential contents, clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure.

(d) However, because the attorney general is an elected partisan official, the usual alliances and political pressures come into play, turning the preparation of titles and summaries into an opportunity to help one side or the other.

(e) As findings above have demonstrated, biases and political influences are real. Bias in ballot measure titles and summaries undermine confidence in government and wrongly insert partisan influence where none is needed.

(2) In enacting this act, the people intend to close down this playground of political manipulation. Voters deserve clarity and accuracy without political spin when they are asked to decide issues of consequences on the ballot. This act would remove the title and summary responsibility from the attorney general and give it to nonpartisan legal counsel within house of representatives office of program research.

PART III

THE PROPOSITION AND IMPLEMENTATION

Sec. 3. RCW 29A.72.025 and 2009 c 415 s 7 are each amended to read as follows:

The office of financial management, in consultation with the secretary of state, (~~(the attorney general)~~) legal counsel within

the house of representatives office of program research, and any other appropriate state or local agency, shall prepare a fiscal impact statement for each of the following state ballot measures: (1) An initiative to the people that is certified to the ballot; (2) an initiative to the legislature that will appear on the ballot; (3) an alternative measure appearing on the ballot that the legislature proposes to an initiative to the legislature; (4) a referendum bill referred to voters by the legislature; and (5) a referendum measure appearing on the ballot. Fiscal impact statements must be written in clear and concise language, avoid legal and technical terms when possible, and be filed with the secretary of state no later than the tenth day of August. Fiscal impact statements may include easily understood graphics.

A fiscal impact statement must describe any projected increase or decrease in revenues, costs, expenditures, or indebtedness that the state or local governments will experience if the ballot measure were approved by state voters. Where appropriate, a fiscal impact statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. A fiscal impact statement must include both a summary of not to exceed one hundred words and a more detailed statement that includes the assumptions that were made to develop the fiscal impacts.

Fiscal impact statements must be available online from the secretary of state's web site and included in the state voters' pamphlet. Additional information may be posted on the web site of the office of financial management.

Sec. 4. RCW 29A.72.040 and 2008 c 1 s 7 are each amended to read as follows:

The secretary of state shall give a serial number to each initiative, referendum bill, referendum measure, or measure for an advisory vote of the people, using a separate series for initiatives to the legislature, initiatives to the people, referendum bills, referendum measures, and measures for an advisory vote of the

people, and forthwith transmit one copy of the measure proposed bearing its serial number to ((the attorney general)) legal counsel within the house of representatives office of program research.

Thereafter a measure shall be known and designated on all petitions, ballots, and proceedings as "Initiative Measure No.," "Referendum Bill No.," "Referendum Measure No.," or "Advisory Vote No."

Sec. 5. RCW 29A.72.050 and 2003 c 111 s 1806 are each amended to read as follows:

(1) The ballot title for an initiative to the people, an initiative to the legislature, a referendum bill, or a referendum measure consists of: (a) A statement of the subject of the measure; (b) a concise description of the measure; and (c) a question in the form prescribed in this section for the ballot measure in question. The statement of the subject of a measure must be sufficiently broad to reflect the subject of the measure, sufficiently precise to give notice of the measure's subject matter, and not exceed ten words. The concise description must contain no more than thirty words, be a true and impartial description of the measure's essential contents, clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure.

(2) For an initiative to the people, or for an initiative to the legislature for which the legislature has not proposed an alternative, the ballot title must be displayed on the ballot substantially as follows:

"Initiative Measure No. concerns (statement of subject). This measure would (concise description). Should this measure be enacted into law?

Yes☐

No☐

(3) For an initiative to the legislature for which the legislature has proposed an alternative, the ballot title must be displayed on the ballot substantially as follows:

"Initiative Measure Nos. . . . and . . .B concern (statement of subject).

Initiative Measure No. . . . would (concise description).

As an alternative, the legislature has proposed Initiative Measure No. . . .B, which would (concise description).

1. Should either of these measures be enacted into law?

Yes☐

No☐

2. Regardless of whether you voted yes or no above, if one of these measures is enacted, which one should it be?

Measure No.☐

or

Measure No.☐

(4) For a referendum bill submitted to the people by the legislature, the ballot issue must be displayed on the ballot substantially as follows:

"The legislature has passed Bill No. . . . concerning (statement of subject). This bill would (concise description). Should this bill be:

Approved☐

Rejected☐

(5) For a referendum measure by state voters on a bill the legislature has passed, the ballot issue must be displayed on the ballot substantially as follows:

"The legislature passed Bill No. . . . concerning (statement of subject) and voters have filed a sufficient referendum petition on this bill. This bill would (concise description). Should this bill be:

Approved☐
Rejected☐

(6) The legislature may specify the statement of subject or concise description, or both, in a referendum bill that it refers to the people. The legislature may specify the concise description for an alternative it submits for an initiative to the legislature. If the legislature fails to specify these matters, (~~the attorney general~~) legal counsel within the house of representatives office of program research shall prepare the material that was not specified. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal.

(~~The attorney general~~) Legal counsel within the house of representatives office of program research shall specify the statement of subject and concise description for an initiative to the people, an initiative to the legislature, and a referendum measure. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal.

Sec. 6. RCW 29A.72.060 and 2003 c 111 s 1807 are each amended to read as follows:

Within five days after the receipt of an initiative or referendum (~~the attorney general~~) legal counsel within the house of representatives office of program research shall formulate the ballot title, or portion of the ballot title that the legislature has not provided, required by RCW 29A.72.050 and a summary of the measure, not to exceed seventy-five words, and transmit the serial number for the measure, complete ballot title, and summary to the secretary of state. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits in this section.

Sec. 7. RCW 29A.72.080 and 2013 c 11 s 73 are each amended to read as follows:

Any persons, including (~~the attorney general~~) legal counsel within the house of representatives office of program research or either or both houses of the legislature, dissatisfied with the ballot title or summary for a state initiative or referendum may, within five days from the filing of the ballot title in the office of the secretary of state, appeal to the superior court of Thurston county by petition setting forth the measure, the ballot title or summary, and their objections to the ballot title or summary and requesting amendment of the ballot title or summary by the court. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits contained in this section.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the secretary of state, upon (~~the attorney general~~) legal counsel within the house of representatives office of program research, and upon the person proposing the measure if the appeal is initiated by someone other than that person. Upon the filing of the petition on appeal or at the time to which the hearing may be adjourned by consent of the appellant, the court shall accord first priority to examining the proposed measure, the ballot title or summary, and the objections to that ballot title or summary, may hear arguments, and shall, within five days, render its decision and file with the secretary of state a certified copy of such ballot title or summary as it determines will meet the requirements of RCW 29A.72.060. The decision of the superior court shall be final. Such appeal shall be heard without costs to either party.

Sec. 8. RCW 29A.72.280 and 2003 c 111 s 1828 are each amended to read as follows:

For a measure designated as "Alternative Measure No. . . . B," the secretary of state shall obtain from the measure adopting the alternative, or otherwise (~~the attorney general~~) legal counsel within the house of representatives office of program research, a concise description of the alternative measure that differs from the

concise description of the original initiative and indicates as clearly as possible the essential differences between the two measures.

Sec. 9. RCW 29A.72.283 and 2008 c 1 s 8 are each amended to read as follows:

Within five days of receipt of a measure for an advisory vote of the people from the secretary of state under RCW 29A.72.040 (~~the attorney general~~) legal counsel within the house of representatives office of program research shall formulate a short description not exceeding thirty-three words and not subject to appeal, of each tax increase and shall transmit a certified copy of such short description meeting the requirements of this section to the secretary of state. The description must be formulated and displayed on the ballot substantially as follows:

"The legislature imposed, without a vote of the people, (identification of tax and description of increase), costing (most up-to-date ten-year cost projection, expressed in dollars and rounded to the nearest million) in its first ten years, for government spending. This tax increase should be:

Repealed []

Maintained .. []"

Saturdays, Sundays, and legal holidays are not counted in calculating the time limits in this section. The words "This tax increase should be: Repealed . . . [] Maintained . . . []" are not counted in the thirty-three word limit for a short description under this section.

NEW SECTION. **Sec. 10.** The provisions of this act are to be liberally construed to effectuate the policies, purposes, and intent of this act.

NEW SECTION. **Sec. 11.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

NEW SECTION. **Sec. 12.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 13.** This act may be known and cited as the depoliticizing ballot measure titles and summaries act.

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